

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

DONEZA SMITH

**DEFENDANTS**

COMENITY BANK

(b) County of Residence of First Listed Plaintiff PHILADELPHIA  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C.  
30 EAST BUTLER PIKE, AMBLER, PA 19002  
PHONE: (215) 540-8888 EXT. 116

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |   |   |
|---|---|---|---|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2         | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5         |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3         | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6         |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227 et seq.

Brief description of cause:

TELEPHONE CONSUMER PROTECTION ACT

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/28/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2004 West Diamond Street, Philadelphia, PA 19121

Address of Defendant: One Righter Parkway, Suite 100, Wilmington, DE 19803

Place of Accident, Incident or Transaction: \_\_\_\_\_

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) 47 U.S.C. § 227 et seq.

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) \_\_\_\_\_

## ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, CRAIG THOR KIMMEL, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 08-28-15

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 08-28-15

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

DONEZA SMITH v.  
COMENITY BANK

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

08-28-15

Date

Attorney-at-law

Plaintiff, Doneza Smith

Attorney for

215-540-8888 x 116

Telephone

877-788-2864

FAX Number

kimmel@creditlaw.com

E-Mail Address

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4 DONEZA SMITH,                                   )  
5                                   )  
6                                   Plaintiff,                                   )  
7                                   )  
8                                   v.                                   )  
9                                   )  
10                                   COMENITY BANK,                                   )  
11                                   )  
12                                   Defendant.                                   )  
13

**Case No.:**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

11                                   **COMPLAINT**

12                                   DONEZA SMITH (“Plaintiff”), by and through her attorneys, KIMMEL &  
13  
14 SILVERMAN, P.C., alleges the following against COMENITY BANK  
15 (“Defendant”):

16                                   **INTRODUCTION**

17                                   1.     Plaintiff’s Complaint is based on the Telephone Consumer Protection  
18  
19 Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

20                                   **JURISDICTION AND VENUE**

21                                   2.     Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See  
22  
23 Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

24                                   3.     Defendant conducts business in the Commonwealth of Pennsylvania  
25 and as such, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3  
4 5. Plaintiff is a natural person residing in Philadelphia, Pennsylvania  
5 19121.

6 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7  
8 7. Defendant is a corporation that does business in Pennsylvania and  
9 maintains its principle place of business at One Righter Parkway, Suite 100,  
10 Wilmington, Delaware 19803.

11 8. Defendant is a “person” as that term is defined by 47 U.S.C.  
12 §153(39).

13  
14 9. Defendant acted through its agents, employees, officers, members,  
15 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
16 representatives, and insurers.

17 **FACTUAL ALLEGATIONS**

18  
19 10. Plaintiff has a cellular telephone number that she has had for more  
20 than one year.

21 11. The phone number has been assigned to a cellular telephone service  
22 for which Plaintiff incurs a charge for incoming calls.

23  
24 12. Plaintiff did not consent to receive automated calls from Defendant.

25 13. Beginning in or about January 2015, and continuing through May

1 2015, Defendant called Plaintiff on her cellular telephone an average of ten (10) to  
2 thirteen (13) times each day.

3  
4 14. Defendant used an automatic telephone dialing system and automatic  
5 and/or pre-recorded messages.

6 15. Plaintiff's calls were not made for "emergency purposes."

7  
8 16. When Plaintiff answered Defendant's calls, the prerecorded message  
9 would state Defendant's name, go silent, and then background noise would come  
10 through the receiver.

11 17. As such, Plaintiff was unable to speak to a live individual or revoke  
12 consent, as the company's procedures made it impossible to do so.

13  
14 18. Defendant's calls were so consistent that Plaintiff was forced to  
15 download an application to avoid future calls which blocked unwanted numbers.

16  
17 **DEFENDANT VIOLATED THE**  
18 **TELEPHONE CONSUMER PROTECTION ACT**

19 19. Plaintiff incorporates the forgoing paragraphs as though the same were  
20 set forth at length herein.

21 20. Defendant initiated multiple automated telephone calls to Plaintiff's  
22 cellular telephone using a prerecorded voice.

23  
24 21. Defendant initiated these automated calls to Plaintiff using an  
25 automatic telephone dialing system.

1       22. Defendant's calls to Plaintiff were not made for emergency purposes.

2       23. Defendant's calls to Plaintiff, in and after January 2015, were not  
3 made with Plaintiff's prior express consent.  
4

5       24. Defendant's acts as described above were done with malicious,  
6 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
7 under the law and with the purpose of harassing Plaintiff.  
8

9       25. The acts and/or omissions of Defendant were done unfairly,  
10 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
11 lawful right, legal defense, legal justification or legal excuse.  
12

13       26. As a result of the above violations of the TCPA, Plaintiff has suffered  
14 the losses and damages as set forth above entitling Plaintiff to an award of  
15 statutory, actual and trebles damages.  
16

### 17                               PRAYER FOR RELIEF

18       WHEREFORE, Plaintiff, DONEZA SMITH, respectfully prays for a  
19 judgment as follows:

20               a. All actual damages suffered pursuant to 47 U.S.C. §  
21               227(b)(3)(A);  
22

23               b. Statutory damages of \$500.00 per telephone call pursuant to 47  
24               U.S.C. § 227(b)(3)(B);  
25

- 1 c. Treble damages of \$1,500 per telephone call pursuant to 47  
2 U.S.C. §227(b)(3) or alternatively that amount for all calls  
3 made after Defendant was notified that they were calling the  
4 wrong person and wrong number;  
5  
6 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);  
7  
8 e. Any other relief deemed appropriate by this Honorable Court.

9 **DEMAND FOR JURY TRIAL**

10 PLEASE TAKE NOTICE that Plaintiff, DONEZA SMITH, demands a jury  
11 trial in this case.

12  
13  
14 RESPECTFULLY SUBMITTED,

15 DATED: 08-28-15

KIMMEL & SILVERMAN, P.C.

16  
17 By: 

18 Craig Thor Kimmel  
19 Attorney ID # 57100  
20 Kimmel & Silverman, P.C.  
21 30 E. Butler Pike  
22 Ambler, PA 19002  
23 Phone: (215) 540-8888  
24 Fax: (877) 788-2864  
25 Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)